090083

STATE OF FLORIDA

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

GENERAL COUNSEL
PATRICK L. "BOOTER" IMHOF
(850) 413-6199

RECEIVED-FPSC
09 SEP -1 AM 10:47
COMMISSION CLERK

Public Service Commission

September 1, 2009

FPSC, CLK - CORRESPONDENCE
__Administrative__X__Parties__Consumer
DOCUMENT NO. 06664-09
DISTRIBUTION: _____

Brian G. Davidson
Sun City Center Community Association, Inc.
1310 Wallwood Drive
Brandon, FL 33510

Re: 090083-GU-Complaint of Sun City Center Community Association, Inc. against Peoples Gas System for alleged improper billing

Dear Mr. Davidson:

Enclosed is a copy of the Staff Recommendation that was refiled in this matter. The Commission is expected to consider this Recommendation at its September 15, 2009, Agenda Conference which will be held in Room 148, Betty Easley Conference Center, in Tallahassee beginning at 9:30 a.m.

If you wish to attend, please arrive promptly at the beginning of the Agenda Conference, as we cannot state the exact time at which this item will be heard. You are welcome to come to this Agenda Conference and observe and/or participate in the discussion of this item. If you have any questions, please feel free to call me at (850) 413-6234.

Sincerely,

Ralph R. Jaeger

Ralph Jaeger
Senior Attorney

RRJ/amv

Enclosure

cc: Office of the Commission Clerk
Peoples Gas System
Connie Kummer (ECR)
Rhonda Hicks (SSC)

RECEIVED-FPSC
09 JUL -1 PM 12:59
COMMISSION
CLERK

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 1, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Jaeger)
Division of Economic Regulation (Kummer)
Division of Service, Safety & Consumer Assistance (Hicks)

RE: Docket No. 090083-GU – Complaint of Sun City Center Community Association, Inc. against Peoples Gas System for alleged improper billing.

AGENDA: ~~07/14/09~~ 09/15/09 – Regular Agenda – Proposed Agency Action -- Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\090083.RCM.DOC

Case Background

On December 7, 2007, Mr. Brian Davidson, of Energy Tax Solutions, filed an informal complaint against Peoples Gas System (Company or PGS) on behalf of the Sun City Center Community Association, Inc. (SCCCA or Customer). This complaint was assigned Complaint No. 761557G. In that complaint, he alleges that the Customer's gas service had been improperly switched in August 2005 from the Commercial GS-2 Service rate to the Residential Service rate. On behalf of SCCCA, Mr. Davidson requests that the Company be required to switch SCCCA back to the GS-2 Service rate, and that it be refunded the difference in revenues collected with interest.

After reviewing the informal complaint, by letter dated May 8, 2008, staff advised the customer that it appeared that the Company had correctly applied its tariffs in accordance with

DOCUMENT NUMBER-DATE
06641 JUL-1 8
FPSC-COMMISSION CLERK

the orders issued by the Commission. Staff further advised the Customer that this was staff's opinion, and that an informal conference could be held to see if a settlement could be reached, or the matter could be taken directly to the Commission if the parties thought that an informal conference would be unproductive. To try to reach a settlement, staff held an informal conference on July 30, 2008. At the informal conference, the Company asked the Customer to provide clarification or corroborating evidence on several points, which the Customer provided on August 11, 2008. No settlement was reached by the parties.

On August 27, 2008, the Customer sent an e-mail to staff requesting reconsideration of all facts and evidence submitted and a recommendation to the Commission supporting the Customer's position. By letter dated January 22, 2009, the Customer again requested that staff take action on its informal complaint. However, when staff did not quickly take action in response to the January 22, 2009, letter, the Customer filed its formal complaint on February 16, 2009. The formal complaint was assigned to this docket.

In the formal complaint, the Customer reiterates that the usage for common areas of SCCCA was properly billed by the Company on the GS-2 Service rate (commercial rate) prior to August 2005. SCCCA states that the Company alleges that it switched SCCCA to the Residential Service rate to comply with Commission Order 19365.[1] In that Order, the Commission found "that gas utilities should consider service to commonly owned areas of condominium associations, cooperative apartments, and homeowner associations as residential service." In the case at hand, PGS is providing gas for the heating of the community pool.

The complaint alleges that this change to the Residential Service rate is in conflict with Provision 2 of the Residential Service rate schedule (tariff) which states that, "None of the Gas is used in any endeavor which sells or rents a commodity or provides service for a fee," because residents pay special fees to the SCCCA for exclusive use of the pool for certain hours and days. SCCCA further states that it is a Community Association (CA), and is not included in the description in Order No. 19365 or the tariff which includes specifically "commonly owned facilities of condominium associations, cooperative apartment, and homeowners associations." SCCCA further notes that Tampa Electric Company (TECO) serves similar accounts using a Commercial rate. In conclusion, the Customer requests that it be moved back to the Commercial GS-2 Service rate (tariff), and that it receive a refund with interest of the difference between the two rates since the switch occurred in August 2005.

This recommendation addresses the Customer's complaint that it should be billed under the GS-2 Service rate and not the Residential Service rate, and whether the customer should be switched back to the GS-2 Service rate and awarded a refund with interest for being charged inappropriate rates from August 2005 through to the present. The Commission has jurisdiction pursuant to Sections 366.04 and 366.05(1), Florida Statutes (F.S.).

[1] Issued May 24, 1988, in Docket No. 860106-PU, In re: General Investigation Into Deposit Practices.

Discussion of Issues

Issue 1: From August 2005 through to the present, was the Sun City Center Community Association, Inc., correctly billed pursuant to the Residential Service (RS) tariff of the Peoples Gas System, or should it have been billed using the Commercial GS-2 Service tariff?

Recommendation: Because the service provided is in the nature of residential service, Sun City Center Community Association, Inc., was correctly billed pursuant to the Residential Service rate tariff of Peoples Gas System in effect prior to the approval of new GS Service tariffs at the May 19, 2009, Agenda Conference. (Kummer, Jaeger)

Staff Analysis: In SCCCA's letters and complaints to the Commission, it raises three main issues as to why it should be billed under the GS-2 Commercial Service rate (tariff) and not the Residential rate. Staff's analysis addresses each of them below.

1. SCCCA alleges that because it is a Community Association and not a Condominium Association, Cooperative Apartment, or Homeowner's Association as set out in Order No. 19365 and the Company's tariffs, it is not subject to being charged under the Residential Service rate tariff.

The Sixth Revised Sheet No. 7.201,[3] titled Company's RESIDENTIAL SERVICE (Rate Schedule RS) tariff provides as follows:

> **Applicability:**
>
> Gas Service for residential purposes in individually metered residences and separately metered apartments. Also, for Gas used in commonly owned facilities of condominium associations, cooperative apartments, and homeowners associations, (excluding any premise at which the only Gas-consuming appliance or equipment is a standby electric generator), subject to the following criteria:
>
> 1. 100% of the Gas is used exclusively for the co-owner's benefit.

(Emphasis supplied by staff.) Also, Order No. 19365, page 3, stated: "This Commission believes that gas utilities should consider service to commonly owned areas of condominium associations, cooperative apartments, and homeowner associations as residential service."

SCCCA focuses on the three specific categories listed, and also that the gas used must be exclusively for the co-owner's benefit. SCCCA states that it is neither a Condominium Association, Cooperative Apartment, nor a Homeowners Association, which are organized under Chapter 720, F.S., but is a Community Association organized under Chapter 617, F.S. SCCCA

[3] See Attachment A for the full tariff sheet.

further argues that this is a "distinction with a difference" in that the dues-paying members have no common ownership interests in the common property, but merely a right to use the recreational facilities managed by the Customer as long as the members pay their dues. Also, SCCCA notes that Order No. 19365 only requires that the commonly-owned areas of the condominium associations, cooperative apartments, and homeowner associations should be considered residential service. Fitting none of these requirements, SCCCA argues that neither the tariff nor the Order are applicable to SCCCA.

The Company states that the proper tariff is the Residential Service tariff, and that:

1. A community association is the same as a condo or homeowners association, and to treat them otherwise is a "distinction without a difference;" and
2. The fees charged by the Customer (in connection with the gas-heated pool) are no different than assessments paid by a condo or homeowners association, and are not fees for a service.

By letter dated February 19, 2008, the Customer provided staff with its Articles of Incorporation (Articles). The Articles state that the SCCCA operates by and for the benefit of the residents or certain other parties expressly included in the Articles. Article II states:

> The corporation is to serve the residents of the retirement community . . . known as Sun City Center, by providing relief for the elderly, providing assistance and essential service . . . for the benefit of the residents . . . .
>
> In furtherance of these purposes, Sun City Center Community Association, Inc. shall manage recreational facilities owned for the benefit of all residents, shall enforce that private zoning known as "restrictive covenants running with the land" on behalf of the residents and for the benefit of the community . . . .

Article IV states:

> Members of this corporation shall be all residents of Sun City Center and those individuals who would subsequently qualify if Sun City Center Civic Association had not consolidated into Sun City Center Community Association.
>
> In the SCCCA's Bylaw, the Preamble states:
>
> Payment of dues, and the requirement contained in the "restrictive covenants" that at least one occupant of each dwelling unit must be fifty-five (55) years of age or older . . . are determined to be of paramount importance and benefit to all residents . . . .

Bylaw I - Membership states:

> Section 1. All residents/resident-owners in the retirement portion of Sun City Center are members of the Association.

> Section 2. Use of Association facilities and other privileges normal to Association membership requires that all members have all dues, fees, and assessments obligations satisfied, ...
>
> Section 3. Residents of Lake Towers who have previously been members of the Association may continue their membership, subject to rules and conditions established by the Board of Directors.

Bylaw V - Section 7 states:

> The Board may exercise the right of lien to effect collection of dues which remain unpaid thirty (30) days after the due date.

Although Order No. 19365 specifically addresses only "service to commonly owned areas of condominium associations, cooperative apartments, and homeowner associations" as being residential, and does not list "community associations," staff believes that this omission is not conclusive. Staff notes that in Order No. 4150, issued March 2, 1967,[4] the Commission initially only required that service to the common areas of condominium associations and cooperative apartments be provided pursuant to the residential tariffs. Then, by Order No. 8539, issued October 25, 1978, the Commission expanded this to include service to common areas provided by homeowners associations.[5] In both those orders and in Order No. 19365, the thrust is not who the entity is, but the nature of the service provided. Further, all the orders find that service to common areas, whether electric or gas, is more residential in nature.

In Order No. 10104, issued June 25, 1981,[6] regarding the application of a residential rate to commonly-owned facilities of homeowner associations, the Commission found that the particular incorporation structure of the entity receiving the service did not matter as much as the type of services the utility supplied:

> The Hearing Officer found that the condominium/cooperative form of ownership of common facilities on the one hand, and homeowners' ownership of facilities, are both residential in nature. We concur in this finding noting that the various forms of real property ownership at issue all involve residents sharing in the control and upkeep of common elements and facilities appurtenant to their residences . . . .

(Order 10104, p. 3) Although Order No. 19365 was issued subsequent to Order No. 10104, staff believes that the gist of the orders issued by the Commission is that service provided to common areas such as a community pool is residential in nature, and it is the nature of the service

[4] In Docket No. 7697-EU, In re: Show Cause order to All Electric Utilities on Application of Rates for Energy used in Commonly-owned Facilities in Condominium and Cooperative Apartment Buildings.
[5] In Docket No. 780547-EU, In re: Show cause order to electric utilities concerning the application of the residential rate to commonly-owned facilities of homeowner associations.
[6] In Docket No. 790847-EU, In re: Forsythe Colony Homeowners Association and President's Council of Tamarac v. Florida Power and Light Company v. Florida Public Service Commission.

provided and not the entity to which service is provided that controls its determination as residential service.

Based on the information provided by the SCCCA, staff believes that SCCCA performs a similar function to that of condominium associations, cooperative apartments, and homeowners associations. The fact that it may be incorporated under a different statute or may perform functions not available to other, similar homeowner associations does not preclude it from providing a similar service to its members. Based on the orders noted above, staff believes that it is the nature of the service provided that determines which tariff rate applies, and that maintenance of a swimming pool for members has been determined to be in the nature of residential service. Also, staff notes that Article II of SCCCA's Articles states that "Sun City Center Community Association, Inc. shall manage recreational facilities owned for the benefit of all residents, shall enforce that private zoning known as 'restrictive covenants running with the land' on behalf of the residents and for the benefit of the community . . . ." Therefore, staff recommends that the Commission reject this argument of the SCCCA that the Residential Service rate should only be applicable to services provided by condominium associations, cooperative apartments, or homeowners associations.

2. Argument That the Criteria in Provision 2. of the Residential Service Tariff Prevents the Use of the Residential Service Tariff

In order for the Residential Service tariff to apply, Provision 2. of the Residential Service tariff provides as follows:

> None of the Gas is used in any endeavor which sells or rents a commodity or provides service for a fee.

The Customer argues that it has different clubs offering exercise and dance classes in the gas-heated pool, and that club members are required to pay a separate club fee giving them exclusive use of the pool for specific days and times. Therefore, the Customer believes that Provision 2. of the Residential Service tariff would prevent the application of that tariff in this situation.

By letter dated January 11, 2008, the Customer stated that there was a reciprocal agreement with two non-affiliated assisted living facilities whereby "former residents and members of the Community Association who have moved to one of these 2 facilities are allowed to remain a member as long as they continue to pay their membership dues." (emphasis supplied by the Customer.) Staff believes that this shows that the facilities are open only to resident members or former-resident members – all of whom must maintain their dues -- and that the facilities are not available to the general public at large.

Based on the provisions of the Articles of Incorporation and Bylaws cited above, the provision of recreational facilities is paid for by all members through mandatory dues. Staff believes the fact that some members pay a nominal additional charge for special services or to reserve the pool exclusively is more like a management or maintenance fee than a "fee for service" under the tariff. Use is not based solely on the additional "fees" paid for certain services. Residents would not be eligible to use the facilities at all, absent their general

membership dues to the Association, and the services offered are still available only to members. The members are essentially paying themselves since SCCCA operates as a not-for-profit entity and presumably all funds go back into providing the services offered. Under these circumstances, staff does not believe this fee constitutes a "fee for service" under the tariff which would make the usage commercial in nature. The facilities are still closed to all but a closely defined group of residential users. Therefore, staff recommends that the requirements of provision 2. noted above would not prohibit the use of the Residential Service rate in this situation.

3. Consistency Between Gas and Electric Application.

The Customer argues that all 11 of its electric accounts with TECO are at Commercial rates and have consistently been so since inception by TECO. The Customer notes that in Order No. 19365, the Commission found that gas service to commonly owned areas was residential based on similar Commission rulings regarding electricity use. Conversely, SCCCA states "where it has been established that electric service to Customer's facilities is commercial, then gas use to same facilities is also commercial."

Staff believes that this complaint addresses only what is the correct gas service tariff to use and does not address what type of electric service is entailed by the 11 different electric accounts. Staff notes that in Orders Nos 4150, 8539, 19365, and 10104, the Commission has consistently determined that common areas such as pools should be provided service based on the Residential Service rate. The Commission has also stated that it is not the corporate makeup of the entity, but the use that is determinant of the appropriate tariff.

4. Conclusion

In summary, staff believes that the type of use by SCCCA in this instance has been determined by the Commission to be residential in nature. Because the service provided is in the nature of residential service, staff recommends that the Commission find that the Residential Service rate applied by the Company was appropriate, and that the Company correctly billed SCCCA pursuant to PGS's Residential Service rate tariff.

As an additional note, this issue will not occur in the future, as a result of changes made in PGS's recent rate case.[7] Prior to the last rate case, all PGS residential customers initiating service after January 1988, took service under the RS rate, pursuant to Order No. 19365, even though the characteristics of the load could be similar to use by larger GS customers. In PGS's most recent rate case, the General Service classes were restructured to expand the eligibility of the GS-1 through GS-5 rate schedules to include residential use. This allows the largest residential customers to be included with similarly-situated non-residential customers for pricing purposes based on their therm usage levels. An additional benefit of this approach is that it clarifies the rights of condominium units to purchase their gas supply from a third-party pursuant

[7] See Order No. PSC-09-0411-FOF-GU, issued June 9, 2009, in Docket No. 080318-GU, In re: Petition for a Rate Increase by Peoples Gas System.

to the Company's transportation service program because all commercial customers must be offered the right to take transportation-only services under federal law.[8] The deposit terms and conditions associated with residential service continue to apply to condominium customers that are reclassified to a GS rate schedule.[9]

[8] See Rule 25-7.0335(1), F.A.C.
[9] See Order No. PSC-09-0411-FOF-GU, p. 55.

Issue 2: Should Peoples Gas System be required to refund with interest the revenues collected from Sun City Center Community Association, Inc., from August 2005 to the present?

Recommendation: No. If the Commission agrees with staff's recommendation in Issue 1, the Company has used the appropriate tariff, and no refunds are required. (Kummer, Jaeger)

Staff Analysis: Based on staff's recommendation in Issue 1, staff believes that the Company has properly applied the Residential Service rate at least through approval of the new GS Service rates approved in Order No. PSC-09-0411-FOF-GU, and no refund of the tariffed rates charged by PGS is required.

If the Commission disagrees with staff's analysis, and finds that the appropriate tariff to apply was the GS-2 Service tariff (commercial), then the Company should be required to make refunds with interest beginning August 2005 through to the time the Company implements the appropriate tariff. Also, it appears that the new GS Service tariff rates approved by Order No. PSC-09-0411-FOF-GU are applicable and are appropriate on a going-forward basis.

Issue 3: Should this docket be closed?

Recommendation: Yes. If no substantially affected person files a protest within 21 days of the date of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order. (Jaeger)

Staff Analysis: If no substantially affected person files a protest within 21 days of the date of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order.

RESIDENTIAL SERVICE
Rate Schedule RS

Availability:

Throughout the service areas of the Company.

Applicability.

Gas Service for residential purposes in individually metered residences and separately metered apartments. Also, for Gas used in commonly owned facilities of condominium associations, cooperative apartments, and homeowners associations, (excluding any premise at which the only Gas-consuming appliance or equipment is a standby electric generator), subject to the following criteria:

1. 100% of the Gas is used exclusively for the co-owner's benefit.
2. None of the Gas is used in any endeavor which sells or rents a commodity or provides service for a fee.
3. Each Point of Delivery will be separately metered and billed.
4. A responsible legal entity is established as the Customer to whom the Company can render its bills for said services.

Monthly Rate:

Customer Charge:	$10.00 per month
Distribution Charge:	50.39034 per Therm

Note 1 – Company's BudgetPay plan is available to eligible Customers receiving Gas Service pursuant to this rate schedule (See Sheet No. 5.401-3).

The bill for the Therms billed at the above rates shall be increased in accordance with the provisions of the Company's Purchased Gas Adjustment Clause set forth on Sheet No. 7.101-1.

Minimum Bill: The Customer charge.

Special Conditions:

1. The rates set forth above shall be subject to the operation of the Energy Conservation Cost Recovery Adjustment Clause set forth on Sheet No. 7.101-2.
2. The rates set forth in this schedule shall be subject to the operation of the Company's Competitive Rate Adjustment Clause set forth on Sheet No. 7.101-5.

090083

STATE OF FLORIDA

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

GENERAL COUNSEL
PATRICK L. "BOOTER" IMHOF
(850) 413-6199

Public Service Commission

RECEIVED-FPSC
09 SEP -1 AM 10:47
COMMISSION CLERK

September 1, 2009

Paula K. Brown
Peoples Gas System
Regulatory Affairs
P.O. Box 111
Tampa, Florida 33601-0111

FPSC, CLK - CORRESPONDENCE
__Administrative X Parties__Consumer
DOCUMENT NO. 06664-09
DISTRIBUTION: _____

Re: 090083-GU-Complaint of Sun City Center Community Association, Inc. against Peoples Gas System for alleged improper billing.

Dear Ms. Brown:

Enclosed is a copy of the Staff Recommendation that was refiled in this matter. The Commission is expected to consider this Recommendation at its September 15, 2009, Agenda Conference which will be held in Room 148, Betty Easley Conference Center, in Tallahassee beginning at 9:30 a.m.

If you wish to attend, please arrive promptly at the beginning of the Agenda Conference, as we cannot state the exact time at which this item will be heard. You are welcome to come to this Agenda Conference and observe and/or participate in the discussion of this item. If you have any questions, please feel free to call me at (850) 413-6234.

Sincerely,

Ralph Jaeger
Senior Attorney

RRJ/amv

Enclosure
cc: Office of the Commission Clerk
Brian G. Davidson
Connie Kummer (ECR)
Rhonda Hicks (SSC)

RECEIVED-FPSC
09 JUL -1 PM 12:59
COMMISSION
CLERK

State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 1, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Jaeger)
Division of Economic Regulation (Kummer)
Division of Service, Safety & Consumer Assistance (Hicks)

RE: Docket No. 090083-GU – Complaint of Sun City Center Community Association, Inc. against Peoples Gas System for alleged improper billing.

AGENDA: 09/15/09 ~~07/14/09~~ – Regular Agenda – Proposed Agency Action -- Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\090083.RCM.DOC

Case Background

On December 7, 2007, Mr. Brian Davidson, of Energy Tax Solutions, filed an informal complaint against Peoples Gas System (Company or PGS) on behalf of the Sun City Center Community Association, Inc. (SCCCA or Customer). This complaint was assigned Complaint No. 761557G. In that complaint, he alleges that the Customer's gas service had been improperly switched in August 2005 from the Commercial GS-2 Service rate to the Residential Service rate. On behalf of SCCCA, Mr. Davidson requests that the Company be required to switch SCCCA back to the GS-2 Service rate, and that it be refunded the difference in revenues collected with interest.

After reviewing the informal complaint, by letter dated May 8, 2008, staff advised the customer that it appeared that the Company had correctly applied its tariffs in accordance with

DOCUMENT NUMBER-DATE
06641 JUL-1 8
FPSC-COMMISSION CLERK

the orders issued by the Commission. Staff further advised the Customer that this was staff's opinion, and that an informal conference could be held to see if a settlement could be reached, or the matter could be taken directly to the Commission if the parties thought that an informal conference would be unproductive. To try to reach a settlement, staff held an informal conference on July 30, 2008. At the informal conference, the Company asked the Customer to provide clarification or corroborating evidence on several points, which the Customer provided on August 11, 2008. No settlement was reached by the parties.

On August 27, 2008, the Customer sent an e-mail to staff requesting reconsideration of all facts and evidence submitted and a recommendation to the Commission supporting the Customer's position. By letter dated January 22, 2009, the Customer again requested that staff take action on its informal complaint. However, when staff did not quickly take action in response to the January 22, 2009, letter, the Customer filed its formal complaint on February 16, 2009. The formal complaint was assigned to this docket.

In the formal complaint, the Customer reiterates that the usage for common areas of SCCCA was properly billed by the Company on the GS-2 Service rate (commercial rate) prior to August 2005. SCCCA states that the Company alleges that it switched SCCCA to the Residential Service rate to comply with Commission Order 19365.[1] In that Order, the Commission found "that gas utilities should consider service to commonly owned areas of condominium associations, cooperative apartments, and homeowner associations as residential service." In the case at hand, PGS is providing gas for the heating of the community pool.

The complaint alleges that this change to the Residential Service rate is in conflict with Provision 2 of the Residential Service rate schedule (tariff) which states that, "None of the Gas is used in any endeavor which sells or rents a commodity or provides service for a fee," because residents pay special fees to the SCCCA for exclusive use of the pool for certain hours and days. SCCCA further states that it is a Community Association (CA), and is not included in the description in Order No. 19365 or the tariff which includes specifically "commonly owned facilities of condominium associations, cooperative apartment, and homeowners associations." SCCCA further notes that Tampa Electric Company (TECO) serves similar accounts using a Commercial rate. In conclusion, the Customer requests that it be moved back to the Commercial GS-2 Service rate (tariff), and that it receive a refund with interest of the difference between the two rates since the switch occurred in August 2005.

This recommendation addresses the Customer's complaint that it should be billed under the GS-2 Service rate and not the Residential Service rate, and whether the customer should be switched back to the GS-2 Service rate and awarded a refund with interest for being charged inappropriate rates from August 2005 through to the present. The Commission has jurisdiction pursuant to Sections 366.04 and 366.05(1), Florida Statutes (F.S.).

[1] Issued May 24, 1988, in Docket No. 860106-PU, In re: General Investigation Into Deposit Practices.

Discussion of Issues

Issue 1: From August 2005 through to the present, was the Sun City Center Community Association, Inc., correctly billed pursuant to the Residential Service (RS) tariff of the Peoples Gas System, or should it have been billed using the Commercial GS-2 Service tariff?

Recommendation: Because the service provided is in the nature of residential service, Sun City Center Community Association, Inc., was correctly billed pursuant to the Residential Service rate tariff of Peoples Gas System in effect prior to the approval of new GS Service tariffs at the May 19, 2009, Agenda Conference. (Kummer, Jaeger)

Staff Analysis: In SCCCA's letters and complaints to the Commission, it raises three main issues as to why it should be billed under the GS-2 Commercial Service rate (tariff) and not the Residential rate. Staff's analysis addresses each of them below.

1. SCCCA alleges that because it is a Community Association and not a Condominium Association, Cooperative Apartment, or Homeowner's Association as set out in Order No. 19365 and the Company's tariffs, it is not subject to being charged under the Residential Service rate tariff.

The Sixth Revised Sheet No. 7.201,[3] titled Company's RESIDENTIAL SERVICE (Rate Schedule RS) tariff provides as follows:

Applicability:

> Gas Service for residential purposes in individually metered residences and separately metered apartments. Also, for Gas used in commonly owned facilities of condominium associations, cooperative apartments, and homeowners associations, (excluding any premise at which the only Gas-consuming appliance or equipment is a standby electric generator), subject to the following criteria:
>
> 1. 100% of the Gas is used exclusively for the co-owner's benefit.

(Emphasis supplied by staff.) Also, Order No. 19365, page 3, stated: "This Commission believes that gas utilities should consider service to commonly owned areas of condominium associations, cooperative apartments, and homeowner associations as residential service."

SCCCA focuses on the three specific categories listed, and also that the gas used must be exclusively for the co-owner's benefit. SCCCA states that it is neither a Condominium Association, Cooperative Apartment, nor a Homeowners Association, which are organized under Chapter 720, F.S., but is a Community Association organized under Chapter 617, F.S. SCCCA

[3] See Attachment A for the full tariff sheet.

further argues that this is a "distinction with a difference" in that the dues-paying members have no common ownership interests in the common property, but merely a right to use the recreational facilities managed by the Customer as long as the members pay their dues. Also, SCCCA notes that Order No. 19365 only requires that the commonly-owned areas of the condominium associations, cooperative apartments, and homeowner associations should be considered residential service. Fitting none of these requirements, SCCCA argues that neither the tariff nor the Order are applicable to SCCCA.

The Company states that the proper tariff is the Residential Service tariff, and that:

1. A community association is the same as a condo or homeowners association, and to treat them otherwise is a "distinction without a difference;" and
2. The fees charged by the Customer (in connection with the gas-heated pool) are no different than assessments paid by a condo or homeowners association, and are not fees for a service.

By letter dated February 19, 2008, the Customer provided staff with its Articles of Incorporation (Articles). The Articles state that the SCCCA operates by and for the benefit of the residents or certain other parties expressly included in the Articles. Article II states:

> The corporation is to serve the residents of the retirement community . . . known as Sun City Center, by providing relief for the elderly, providing assistance and essential service . . . for the benefit of the residents . . . .
>
> In furtherance of these purposes, Sun City Center Community Association, Inc. shall manage recreational facilities owned for the benefit of all residents, shall enforce that private zoning known as "restrictive covenants running with the land" on behalf of the residents and for the benefit of the community . . . .

Article IV states:

> Members of this corporation shall be all residents of Sun City Center and those individuals who would subsequently qualify if Sun City Center Civic Association had not consolidated into Sun City Center Community Association.
>
> In the SCCCA's Bylaw, the Preamble states:
>
> Payment of dues, and the requirement contained in the "restrictive covenants" that at least one occupant of each dwelling unit must be fifty-five (55) years of age or older . . . are determined to be of paramount importance and benefit to all residents . . . .

Bylaw I - Membership states:

> Section 1. All residents/resident-owners in the retirement portion of Sun City Center are members of the Association.

> Section 2. Use of Association facilities and other privileges normal to Association membership requires that all members have all dues, fees, and assessments obligations satisfied, ...
>
> Section 3. Residents of Lake Towers who have previously been members of the Association may continue their membership, subject to rules and conditions established by the Board of Directors.

Bylaw V - Section 7 states:

> The Board may exercise the right of lien to effect collection of dues which remain unpaid thirty (30) days after the due date.

Although Order No. 19365 specifically addresses only "service to commonly owned areas of condominium associations, cooperative apartments, and homeowner associations" as being residential, and does not list "community associations," staff believes that this omission is not conclusive. Staff notes that in Order No. 4150, issued March 2, 1967,[4] the Commission initially only required that service to the common areas of condominium associations and cooperative apartments be provided pursuant to the residential tariffs. Then, by Order No. 8539, issued October 25, 1978, the Commission expanded this to include service to common areas provided by homeowners associations.[5] In both those orders and in Order No. 19365, the thrust is not who the entity is, but the nature of the service provided. Further, all the orders find that service to common areas, whether electric or gas, is more residential in nature.

In Order No. 10104, issued June 25, 1981,[6] regarding the application of a residential rate to commonly-owned facilities of homeowner associations, the Commission found that the particular incorporation structure of the entity receiving the service did not matter as much as the type of services the utility supplied:

> The Hearing Officer found that the condominium/cooperative form of ownership of common facilities on the one hand, and homeowners' ownership of facilities, are both residential in nature. We concur in this finding noting that the various forms of real property ownership at issue all involve residents sharing in the control and upkeep of common elements and facilities appurtenant to their residences . . . .

(Order 10104, p. 3) Although Order No. 19365 was issued subsequent to Order No. 10104, staff believes that the gist of the orders issued by the Commission is that service provided to common areas such as a community pool is residential in nature, and it is the nature of the service

[4] In Docket No. 7697-EU, In re: Show Cause order to All Electric Utilities on Application of Rates for Energy used in Commonly-owned Facilities in Condominium and Cooperative Apartment Buildings.
[5] In Docket No. 780547-EU, In re: Show cause order to electric utilities concerning the application of the residential rate to commonly-owned facilities of homeowner associations.
[6] In Docket No. 790847-EU, In re: Forsythe Colony Homeowners Association and President's Council of Tamarac v. Florida Power and Light Company v. Florida Public Service Commission.

provided and not the entity to which service is provided that controls its determination as residential service.

Based on the information provided by the SCCCA, staff believes that SCCCA performs a similar function to that of condominium associations, cooperative apartments, and homeowners associations. The fact that it may be incorporated under a different statute or may perform functions not available to other, similar homeowner associations does not preclude it from providing a similar service to its members. Based on the orders noted above, staff believes that it is the nature of the service provided that determines which tariff rate applies, and that maintenance of a swimming pool for members has been determined to be in the nature of residential service. Also, staff notes that Article II of SCCCA's Articles states that "Sun City Center Community Association, Inc. shall manage recreational facilities owned for the benefit of all residents, shall enforce that private zoning known as 'restrictive covenants running with the land' on behalf of the residents and for the benefit of the community . . . ." Therefore, staff recommends that the Commission reject this argument of the SCCCA that the Residential Service rate should only be applicable to services provided by condominium associations, cooperative apartments, or homeowners associations.

2. Argument That the Criteria in Provision 2. of the Residential Service Tariff Prevents the Use of the Residential Service Tariff

In order for the Residential Service tariff to apply, Provision 2. of the Residential Service tariff provides as follows:

> None of the Gas is used in any endeavor which sells or rents a commodity or provides service for a fee.

The Customer argues that it has different clubs offering exercise and dance classes in the gas-heated pool, and that club members are required to pay a separate club fee giving them exclusive use of the pool for specific days and times. Therefore, the Customer believes that Provision 2. of the Residential Service tariff would prevent the application of that tariff in this situation.

By letter dated January 11, 2008, the Customer stated that there was a reciprocal agreement with two non-affiliated assisted living facilities whereby "former residents and members of the Community Association who have moved to one of these 2 facilities are allowed to remain a member as long as they continue to pay their membership dues." (emphasis supplied by the Customer.) Staff believes that this shows that the facilities are open only to resident members or former-resident members – all of whom must maintain their dues -- and that the facilities are not available to the general public at large.

Based on the provisions of the Articles of Incorporation and Bylaws cited above, the provision of recreational facilities is paid for by all members through mandatory dues. Staff believes the fact that some members pay a nominal additional charge for special services or to reserve the pool exclusively is more like a management or maintenance fee than a "fee for service" under the tariff. Use is not based solely on the additional "fees" paid for certain services. Residents would not be eligible to use the facilities at all, absent their general

membership dues to the Association, and the services offered are still available only to members. The members are essentially paying themselves since SCCCA operates as a not-for-profit entity and presumably all funds go back into providing the services offered. Under these circumstances, staff does not believe this fee constitutes a "fee for service" under the tariff which would make the usage commercial in nature. The facilities are still closed to all but a closely defined group of residential users. Therefore, staff recommends that the requirements of provision 2. noted above would not prohibit the use of the Residential Service rate in this situation.

3. Consistency Between Gas and Electric Application.

The Customer argues that all 11 of its electric accounts with TECO are at Commercial rates and have consistently been so since inception by TECO. The Customer notes that in Order No. 19365, the Commission found that gas service to commonly owned areas was residential based on similar Commission rulings regarding electricity use. Conversely, SCCCA states "where it has been established that electric service to Customer's facilities is commercial, then gas use to same facilities is also commercial."

Staff believes that this complaint addresses only what is the correct gas service tariff to use and does not address what type of electric service is entailed by the 11 different electric accounts. Staff notes that in Orders Nos 4150, 8539, 19365, and 10104, the Commission has consistently determined that common areas such as pools should be provided service based on the Residential Service rate. The Commission has also stated that it is not the corporate makeup of the entity, but the use that is determinant of the appropriate tariff.

4. Conclusion

In summary, staff believes that the type of use by SCCCA in this instance has been determined by the Commission to be residential in nature. Because the service provided is in the nature of residential service, staff recommends that the Commission find that the Residential Service rate applied by the Company was appropriate, and that the Company correctly billed SCCCA pursuant to PGS's Residential Service rate tariff.

As an additional note, this issue will not occur in the future, as a result of changes made in PGS's recent rate case.[7] Prior to the last rate case, all PGS residential customers initiating service after January 1988, took service under the RS rate, pursuant to Order No. 19365, even though the characteristics of the load could be similar to use by larger GS customers. In PGS's most recent rate case, the General Service classes were restructured to expand the eligibility of the GS-1 through GS-5 rate schedules to include residential use. This allows the largest residential customers to be included with similarly-situated non-residential customers for pricing purposes based on their therm usage levels. An additional benefit of this approach is that it clarifies the rights of condominium units to purchase their gas supply from a third-party pursuant

[7] See Order No. PSC-09-0411-FOF-GU, issued June 9, 2009, in Docket No. 080318-GU, In re: Petition for a Rate Increase by Peoples Gas System.

to the Company's transportation service program because all commercial customers must be offered the right to take transportation-only services under federal law.[8] The deposit terms and conditions associated with residential service continue to apply to condominium customers that are reclassified to a GS rate schedule.[9]

[8] See Rule 25-7.0335(1), F.A.C.
[9] See Order No. PSC-09-0411-FOF-GU, p. 55.

Issue 2: Should Peoples Gas System be required to refund with interest the revenues collected from Sun City Center Community Association, Inc., from August 2005 to the present?

Recommendation: No. If the Commission agrees with staff's recommendation in Issue 1, the Company has used the appropriate tariff, and no refunds are required. (Kummer, Jaeger)

Staff Analysis: Based on staff's recommendation in Issue 1, staff believes that the Company has properly applied the Residential Service rate at least through approval of the new GS Service rates approved in Order No. PSC-09-0411-FOF-GU, and no refund of the tariffed rates charged by PGS is required.

If the Commission disagrees with staff's analysis, and finds that the appropriate tariff to apply was the GS-2 Service tariff (commercial), then the Company should be required to make refunds with interest beginning August 2005 through to the time the Company implements the appropriate tariff. Also, it appears that the new GS Service tariff rates approved by Order No. PSC-09-0411-FOF-GU are applicable and are appropriate on a going-forward basis.

Issue 3: Should this docket be closed?

Recommendation: Yes. If no substantially affected person files a protest within 21 days of the date of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order. (Jaeger)

Staff Analysis: If no substantially affected person files a protest within 21 days of the date of the Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order.

Attachment A

RESIDENTIAL SERVICE
Rate Schedule RS

Availability:

Throughout the service areas of the Company.

Applicability.

Gas Service for residential purposes in individually metered residences and separately metered apartments. Also, for Gas used in commonly owned facilities of condominium associations, cooperative apartments, and homeowners associations, (excluding any premise at which the only Gas-consuming appliance or equipment is a standby electric generator), subject to the following criteria:

1. 100% of the Gas is used exclusively for the co-owner's benefit.
2. None of the Gas is used in any endeavor which sells or rents a commodity or provides service for a fee.
3. Each Point of Delivery will be separately metered and billed.
4. A responsible legal entity is established as the Customer to whom the Company can render its bills for said services.

Monthly Rate:

Customer Charge:	$10.00 per month
Distribution Charge:	$0.39034 per Therm

Note 1 – Company's BudgetPay plan is available to eligible Customers receiving Gas Service pursuant to this rate schedule (See Sheet No. 5.401-3).

The bill for the Therms billed at the above rates shall be increased in accordance with the provisions of the Company's Purchased Gas Adjustment Clause set forth on Sheet No. 7.101-1.

Minimum Bill: The Customer charge.

Special Conditions:

1. The rates set forth above shall be subject to the operation of the Energy Conservation Cost Recovery Adjustment Clause set forth on Sheet No. 7.101-2.
2. The rates set forth in this schedule shall be subject to the operation of the Company's Competitive Rate Adjustment Clause set forth on Sheet No. 7.101-5.

PARTIES 090083

STATE OF FLORIDA

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

GENERAL COUNSEL
PATRICK L. "BOOTER" IMHOF
(850) 413-6199

Public Service Commission

RECEIVED-FPSC
09 JUL -1 PM 3:09
COMMISSION CLERK

July 1, 2009

Paula K. Brown
Peoples Gas System
Regulatory Affairs
P.O. Box 111
Tampa, Florida 33601-0111

Re: 090083-GU-Complaint of Sun City Center Community Association, Inc. against Peoples Gas System for alleged improper billing.

Dear Ms. Brown:

Enclosed is a copy of the Staff Recommendation filed in this matter on July 1, 2009. The Commission is expected to consider this Recommendation at its July 14, 2009, Agenda Conference which will be held in Room 148, Betty Easley Conference Center, in Tallahassee beginning at 9:30 a.m.

If you wish to attend, please arrive promptly at the beginning of the Agenda Conference, as we cannot state the exact time at which this item will be heard. You are welcome to come to this Agenda Conference and observe and/or participate in the discussion of this item. If you have any questions, please feel free to call me at (850) 413-6234.

Sincerely,

Ralph Jaeger
Senior Attorney

DOCUMENT NUMBER-DATE
06664 JUL-1 09
FPSC-COMMISSION CLERK

RRJ/amv

Enclosure
cc: Office of the Commission Clerk
Brian G. Davidson
Connie Kummer (ECR)
Rhonda Hicks (SSC)

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA

GENERAL COUNSEL
PATRICK L. "BOOTER" IMHOF
(850) 413-6199

Public Service Commission

RECEIVED-FPSC
09 JUL -1 PM 3:09
COMMISSION CLERK

July 1, 2009

Brian G. Davidson
Sun City Center Community Association, Inc.
1310 Wallwood Drive
Brandon, FL 33510

Re: 090083-GU-Complaint of Sun City Center Community Association, Inc. against Peoples Gas System for alleged improper billing.

Dear Mr. Davidson:

Enclosed is a copy of the Staff Recommendation filed in this matter on July 1, 2009. The Commission is expected to consider this Recommendation at its July 14, 2009, Agenda Conference which will be held in Room 148, Betty Easley Conference Center, in Tallahassee beginning at 9:30 a.m.

If you wish to attend, please arrive promptly at the beginning of the Agenda Conference, as we cannot state the exact time at which this item will be heard. You are welcome to come to this Agenda Conference and observe and/or participate in the discussion of this item. If you have any questions, please feel free to call me at (850) 413-6234.

Sincerely,

Ralph Jaeger
Senior Attorney

RRJ/amv

Enclosure

cc: Office of the Commission Clerk
Peoples Gas System
Connie Kummer (ECR)
Rhonda Hicks (SSC)